

# **EXHIBIT 8**

**ORIGINAL**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA  
-----x  
AMERICAN CIVIL LIBERTIES UNION, et al.,

Plaintiffs,

-against-

Case No.  
98-CV-5591

ALBERTO R. GONZALES, in his official  
capacity as Attorney General of the  
United States,

Defendant.

-----x  
-- DAILY COPY --

153 East 53rd Street  
New York, New York

February 23, 2006  
9:29 a.m.

DEPOSITION of HEATHER C. REARICK,  
taken by the Defendant, pursuant to Notice.

ARISTA COURT REPORTING CO.  
192 Lexington Avenue  
Suite 802  
New York, New York 10016  
(212) 684-6100

1 H. Rearick

2 region of the filter and who is using it,  
3 basically.

4 Q Who determines what content is  
5 put on your websites?

6 A I do.

7 Q Is that solely your determination?

8 A Mostly. Again, the message  
9 boards that run at Scarleteen, I determine  
10 what stays there, you know. So if something  
11 is inappropriate, I edit it.

12 So ultimately that is me  
13 determining it, but I am not creating.

14 That content or leading that  
15 content specifically. So aside of dynamic  
16 content like message boards, that is all my  
17 decision.

18 Q Do your websites advertise on any  
19 other websites?

20 A As in do I purchase advertising?

21 Q Well, let's start with purchase  
22 advertising.

23 A No.

24 Q Do you have your link to any  
25 other websites other than --

1 H. Rearick

2 Q Back when you were a child?

3 A Yes.

4 Q Moving on to the Scarleteen  
5 website, do you consider Scarleteen to be a  
6 sex education website?

7 A Yes.

8 Q What is your philosophy behind  
9 the Scarleteen website?

10 A Oh, boy. I will just rattle a  
11 little and you can cut me off at the pass or  
12 whatever. Everyone does.

13 When we started Scarleteen, it  
14 was largely because it was very clear that  
15 Scarlet Letters, which definitely has sex  
16 education but it also has sexual  
17 entertainment, so we don't really think of  
18 that as a sex ed site as much as a general  
19 sexuality site.

20 I was getting e-mails from  
21 teenagers who were finding that because it  
22 was one of the -- still beyond just being  
23 for women, one of the few sites on the net  
24 at the time which had text, which had sexual  
25 information and not just entertainment,

1 H. Rearick

2 asking me questions about birth control,  
3 about condom use, about where different  
4 parts of their body were, so it was clear to  
5 us that there wasn't anything else for them.

6 So -- and a lot of the time, too,  
7 at the time you would see porn sites -- I  
8 don't know if they were trying to be  
9 condescending, but it was -- who every now  
10 and then would have a little outlink like we  
11 do on Scarlet Letter saying if you are under  
12 18 and you are looking, whatever, go here.  
13 And it would usually be to Disney, which you  
14 know if you are a 16-year-old looking for  
15 birth control information, it is pretty  
16 patronizing and shitty.

17 So, we went ahead and said okay.  
18 And I made like five pages thinking oh, that  
19 will cover it; didn't have sex ed in the  
20 late '80s or early '90s, but at a very  
21 different time. So we made that basically  
22 thinking we are going to have an alternative  
23 to this, there is somewhere that they can go  
24 where the information is more age-appropriate,  
25 where they don't have to try and

1 H. Rearick

2 differentiate between what is information  
3 and what is fictional and entertainment .

4 Q Is it fair to say one of the  
5 reasons that you started Scarleteen was to  
6 have a site specifically for teenagers?

7 A Absolutely.

8 Q I would like to show you a  
9 document. If you can mark this as  
10 Exhibit 1.

11 (Thereupon, the document was  
12 marked Defendant's Exhibit 1 for  
13 Identification, as of this date.)

14 Q Feel free to take a look at this  
15 document.

16 A I am familiar with it.

17 Q It is a few pages long. Do you  
18 recognize this document?

19 A I do.

20 Q Is this from the Scarleteen  
21 website?

22 A Right. This is our "about us"  
23 page, simple primer on who we are and what  
24 we do.

25 Q Does it accurately state who you

1 H. Rearick

2 A We actually try and get some kind  
3 of first person pieces to balance out the  
4 more clinical stuff that we have because it  
5 personalizes things. They generally tend to  
6 relate on an emotional level to something  
7 like this much better than they would, you  
8 know, me making a bulleted list of all of  
9 the issues that they will deal with coming  
10 out. It gives them somebody to kind of feel  
11 like they are being mentored by.

12 Q Do you think that Exhibit 4 has  
13 educational value for people under the age  
14 of 17?

15 MR. WIZNER: Objection, vague  
16 and ambiguous. You can answer.

17 A I do.

18 Q Do you fear prosecution under  
19 COPA for this article?

20 A I sure do.

21 Q I am sorry?

22 A I do, very much.

23 Q Why is that?

24 A I actually had three or four of  
25 my volunteers who are 17 feel that this

1 H. Rearick

2 Q Do you fear prosecution under  
3 COPA for Exhibit 5?

4 A For only this page or for all of  
5 what it links to?

6 Q Let's start with only this page.

7 A No, I do not.

8 Q What about all that it links to?

9 A Not most of what it links to,  
10 but, for instance, there is a section where  
11 it links to how to put on a condom. It gets  
12 pretty explicit.

13 The assumption with any of these  
14 files on the STIs is that the teenagers  
15 reading them will probably be sexually  
16 active and in none of those am I telling  
17 them not to be sexually active. So, maybe.

18 Q So would you fear prosecution  
19 under COPA for instructions of how to put on  
20 a condom?

21 A Yes, I would. Just to clarify  
22 that too, if I was giving those instructions  
23 to only people under 18, I would not. The  
24 fact of the matter is what makes me fear  
25 that is that I am giving those instructions



1 H. Rearick

2 teenagers?

3 A Absolutely.

4 Q Why do you think that is a  
5 helpful resource for teenagers?

6 A Why do I do I think? Well, you  
7 know, the answer to almost any question like  
8 that is going to be anything that we write  
9 and include on this, because the most active  
10 part of the site is constant question and  
11 answer, is usually based on explicitly what  
12 they have asked us for. You know, we get X  
13 number of questions about labioplasty; okay,  
14 fine, I am going to write an article about  
15 that because 50 gazillion girls have asked  
16 me about this.

17 You know, we, I don't decide what  
18 they need to know. They tell me what they  
19 need to know, and I find out.

20 Q Moving on to the sexuality  
21 section, I think we discussed this briefly  
22 before. Can you just give me a summary of  
23 what the sexuality section pertains to?

24 A Sure. Again, that's mostly  
25 sexual mechanics. That is things like

1 H. Rearick

2 A Again it's, they are asking for  
3 this and telling me it is helpful.

4 I talk to, through boards I talk  
5 to at least 60 of them a day, so they are  
6 pretty -- they are teenagers, they are  
7 gregarious and demonstrative and they tell  
8 you and they also tell you when things  
9 really suck.

10 Q Do you change the content based  
11 on the feedback that you get from teenagers?

12 A Often we have.

13 Q In the sexuality section, do I  
14 understand correctly that that is driven,  
15 the content of that is driven by the  
16 teenagers themselves similar to the Skin  
17 Deep section that we discussed?

18 A Yes, you can say that really  
19 pretty much for the whole site.

20 Q The reproduction section, could  
21 you briefly explain what that covers?

22 A Sure. It covers explaining  
23 reproduction and how it happens, and it  
24 mostly talks about birth control. There is  
25 some information on abortion in there.

1 H. Rearick

2 A Yes I do.

3 Q Why do you believe that?

4 A Because every five minutes of my  
5 waking day I get asked if someone is  
6 pregnant. Welcome to my life.

7 Q In the hierarchy of website hits  
8 that you get on Scarleteen, where does  
9 reproduction fall?

10 A It is kind of in the middle. I  
11 mean really, to sum that up for you already,  
12 the Skin Deep, the sexuality section, Gaydar  
13 and like the Pink Slip and boyfriend, those  
14 are kind of the gender specific sections,  
15 those are the highest. But Skin Deep and  
16 sexuality are higher, higher, higher.  
17 Everything else kind of falls under need  
18 them.

19 Q Why do you think Skin Deep and  
20 sexuality are so high? Do you think that is  
21 just what teenagers have the most questions  
22 about?

23 A It is two things actually. That  
24 is part of why, the other part of why is  
25 that the issues in those are ones most

1 H. Rearick

2 addressed by the general Internet.

3 So, for instance, if you go to  
4 the wickipedia section of the vulva, there  
5 is direct links to every piece of  
6 information that we have at Scarleteen on  
7 there. So, it is both because, you know, it  
8 is of compelling interest to the users and  
9 also because those are the best linked  
10 sections from other larger sites.

11 Q So, does wickipedia link to  
12 Scarleteen?

13 A Right, but they won't even be  
14 linking to Scarleteen so much as a specific  
15 article in there. So someone would be at  
16 the wickipedia definition for vulva and go  
17 right to the female anatomy article without  
18 going through our front page. They will see  
19 these navigational menus, but without  
20 immediately knowing that there are other  
21 articles on this site, what are they, where  
22 are they.

23 Q I believe you talked about the  
24 infection section previously, so I will skip  
25 over that for now.

1 H. Rearick

2 e-mailed at the e-mail they gave us, their  
3 user name and their password.

4 Q The location that they give, is  
5 that a city and state or is that --

6 A It is open, so it is really  
7 whatever they put down.

8 Q Is that an optional item?

9 A Yes, it is.

10 Q Do I presume correctly that  
11 agreeing to the guidelines is not an  
12 optional --

13 A No, it is not.

14 Q What are the guidelines for the  
15 message boards for Scarleteen?

16 A The guidelines are really long,  
17 which means that mostly they don't read them  
18 all. Basically the guidelines involve  
19 things like them saying -- there is a  
20 liability waiver that says you know that  
21 most of us here are not doctors, and even  
22 for those of us who are, this is an on-line  
23 service and it is not meant to substitute  
24 for medical care, professional care.

25 There is a section that is just

1 H. Rearick  
2 kind of basic netiquette stuff that tells  
3 them like it is not okay to harass other  
4 users, that this isn't a dating service,  
5 that we ask them to use language in terms of  
6 talking about sex that is accessible for  
7 everyone to understand because we have an  
8 international audience, so American slang  
9 for certain sex language means a kid reading  
10 from India might not understand what they  
11 are saying. We ask them to keep their  
12 language kind of PG-13 clean, mostly so that  
13 the filters don't keep too many users out  
14 basically because language does make a  
15 difference with those.

16 We ask them to be tolerant and  
17 nonjudgmental and not to dis other users.  
18 We tell them if they want to complain about  
19 us they really need to do it in an e-mail,  
20 and they never do. They complain about it  
21 as vocally and in person as they can.

22 Q On the message boards themselves?

23 A Yes.

24 But, you know, we give them  
25 another e-mail. We have two different

1 H. Rearick

2 e-mails for if a parent is reading this and  
3 they have an issue with us, to contact us  
4 with that e-mail to ask questions or  
5 whatever.

6 We have an e-mail for them to  
7 send complaints to, and make clear to them  
8 that if anyone is harassing them or they  
9 think -- every now and then adults do  
10 register on our boards and are pretty much  
11 there to be predatory and get off on  
12 teenagers talking about sex, so we tell them  
13 to contact us if they think that is  
14 happening.

15 We have a list of things that  
16 they can't do or they will get kicked off.  
17 Generally, calling us names or other people  
18 names will get them kicked off.  
19 Proselytizing will get them kicked off.  
20 Telling us their masturbation stories just  
21 because it is fun or they want to get other  
22 people uncomfortable might get them kicked  
23 off.

24 That pretty much sums it up.

25 Q Why would the masturbation

1 H. Rearick

2 stories get them kicked off in that context  
3 that you were referring to?

4 A It tends to equal sexual  
5 harassment a lot of the times when they do it.

6 Usually it is not teenagers doing  
7 it. That is actually where you see more of  
8 the, over the years we've had quite a few  
9 adults who seem to be very entertained.  
10 Generally it is men being very entertained  
11 by pretending to be 17-year-old lesbians and  
12 telling us their fun lesbian sex stories,  
13 you know.

14 And again, when we have really,  
15 really explicit language on there that reads  
16 like a Penthouse Forum letter, that makes a  
17 difference in terms of how we are filtered.  
18 That can limit, for instance, an AOL user's  
19 ability to actually access our site. And  
20 again, depending on the tone that it is in,  
21 it can make people uncomfortable because it  
22 can be sexually harassing.

23 Q Is there anything else that would  
24 get somebody kicked off the site for postings?

25 A If they multiply post the same



1                     H. Rearick

2             topic over and over and over again because  
3             they didn't get an answer in 30 seconds and  
4             they want one, that gets them kicked off. I  
5             think we have being snarky on there, which  
6             is a nice way of saying, of being something  
7             else entirely. I think that is about it.

8                     Q     Do you monitor the content of the  
9             message board?

10                    A     Yes, constantly.

11                    Q     When I say you, I guess I should  
12             clarify that. Do you personally monitor or  
13             do you have a staff that monitors?

14                    A     Both. I am pretty much committed  
15             to being on call on those boards at a  
16             minimum of 30 hours a week. The other  
17             volunteers are there, so really I am both  
18             monitoring the content of the boards per the  
19             users and I am also overseeing my volunteer  
20             staff.

21                    Q     Do you take off what you feel to  
22             be inappropriate items on the message boards?

23                    A     Sometimes, yes. Often we try not  
24             to delete so much as to edit.

25                             For instance, one of the parts of

1 H. Rearick  
2 the guidelines that I didn't mention is that  
3 we tell them never to post their message or  
4 name or their e-mail. Again they are  
5 teenagers talking about sex. That is for  
6 their protection. If they will post an  
7 e-mail, we will just go and edit out the  
8 e-mail from the post, leave an e-mail saying  
9 we edited this out, this is against our  
10 guidelines for your safety.

11 Q When something is edited out,  
12 does it come across as a black box?

13 A Actually we are, our format is to  
14 use a note. So it will say edited by  
15 whoever edited and we will leave a note as  
16 to what we edited and why.

17 Q Can people post photos on the  
18 message boards?

19 A No. That may change. We are  
20 upgrading our software, and in the new  
21 software they can. We would prefer they  
22 wouldn't, so it's just going to be a matter  
23 of if we can disable that part of it or not.  
24 If we can't, then yes, unfortunately they  
25 will be able to.

1 H. Rearick

2 Q I take it when, if and when the  
3 capability for posting photos occurs, that  
4 would be something that would be monitored  
5 as well in the message boards by you or your  
6 staff?

7 A Yes.

8 Q You had mentioned editing out  
9 e-mail addresses. What other types of  
10 things do you monitor for to remove from the  
11 boards?

12 A Again, if the language is really  
13 particularly coarse, we will edit it.

14 Every now and then, just to help  
15 them be cohesive, when they tell the longest  
16 story in the whole wide world in one long  
17 paragraph, if we tell them to use paragraph  
18 breaks and they don't understand it, we will  
19 edit it. They say oh, those are paragraph  
20 breaks, aren't they neat, please do that  
21 again. We'll do that.

22 Things that are protected; if  
23 they post instant message conversations or  
24 repost e-mails that other people sent them,  
25 we will take them out just because that's a

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H. Rearick

copyright and privacy issue. Again, too with, they might find a full article they liked from a newspaper and post the whole article without permission, and again we will edit that and just say truncate it to a paragraph and then link to that because you don't have permission to use that here.

Any other kind of personal information, you know, clearly if they, sometimes they will sign a post with their whole first and last name. We usually edit that out.

Q Is that for the protection of the poster?

A That is their safety, yes.  
Trying to think of what else.  
That is really pretty much it.

Q Do you have specific staff members assigned to monitor specific topics --

A The sections?

Q Right.

A The software works in such that actually in order for a given staffer to be

1 H. Rearick  
2 are, you know, you had your genitals pressed  
3 together and you were not wearing any  
4 undergarments and your body fluids were in  
5 there or, you know, his penis was at your  
6 vaginal opening, blah, blah, blah, blah,  
7 blah.

8 The message boards, the users  
9 will often post that again for various  
10 reasons. Maybe they are posting that as  
11 graphic because they want to and it is  
12 exciting to them, maybe they are posting it  
13 as graphic so we understand what a risk was,  
14 or when I get somebody trying to figure out  
15 if they have been raped or not, telling me  
16 this is what happened, was this rape or was  
17 this not rape.

18 Q Do you have any nude photos of  
19 genitals on the Scarleteen website?

20 A We do not have photos. We have  
21 some illustrations.

22 Q Are the illustrations for  
23 educational purposes?

24 A I would say so.

25 Q Are the depictions of sexual acts

1 H. Rearick

2 that are contained on the Scarleteen website  
3 for educational purposes as well?

4 A We consider them to be so.

5 (Brief break.)

6 BY MS. ULRICH:

7 Q Moving on to Scarlet Letters.

8 A Did you need to mark this?

9 Q Why don't you go ahead and mark  
10 this as Exhibit 6?

11 (Thereupon, the document was  
12 marked Defendant's Exhibit 6 for  
13 Identification, as of this date.)

14 Q Do you recognize Exhibit 6?

15 A I do.

16 Q Is it from the Scarlet Letters  
17 website?

18 A It is a splash page for Scarlet  
19 Letters.

20 Q What is a splash page?

21 A A splash page is not very well  
22 used any more convention in which you put a  
23 front page, especially before a site which  
24 you think is in any way provocative or the  
25 user simply might want to know what they are

1 H. Rearick

2 really just not used very much. When they  
3 are used, yes, they are monitored.

4 Q Are they monitored by you  
5 personally?

6 A They are, but again it's such a  
7 different ballgame than Scarleteen that I  
8 monitor them pretty much only to make sure  
9 that somebody is not just spamming with  
10 solicitations for their latest product. And  
11 otherwise I don't really care what is up  
12 there very much.

13 Q I know we talked about the  
14 different topics on the Scarleteen message  
15 boards. Are there topics on the Scarlet  
16 Letters message board or not?

17 A There are, and I haven't looked  
18 at the message boards in so long that I  
19 couldn't begin to tell you what they are.

20 Q Have you ever taken a posting on  
21 the Scarlet Letters message board down?

22 A Like I said, definitely we  
23 usually remove if somebody is just  
24 soliciting; you know, they are soliciting  
25 for a foreign site or for their latest crazy

1 H. Rearick

2 And it is hard, it is not just as  
3 easy as answering the question and everybody  
4 saying oh, thank you, I didn't get pregnant,  
5 I didn't get chlamydia because of you. It  
6 is me pulling my hair out and crying after a  
7 long day. So yeah.

8 Q Do you think the photography  
9 section of Femmerotic has value for people  
10 under 17?

11 MR. WIZNER: Same objection.

12 You can answer.

13 A Again for some absolutely it  
14 could.

15 Q Continuing the discussion about  
16 the Femmerotic website, what is contained in  
17 the prose and poetry section of Femmerotic?

18 A Prose and poetry. What is  
19 contained in there? That's what is in  
20 there. There is, prose is mostly fiction or  
21 creative nonfiction. The poetry is poetry.  
22 Some of it is sexual, some of it is not.

23 Q How do you decide what pieces go  
24 into the prose and poetry section?

25 A Pretty much everything I have



1 H. Rearick

2 I am pressed to use that term or unless it's  
3 in the context of talking about what it is  
4 and what it is because somebody else is  
5 going to wonder).

6 Q Do you think there is a  
7 distinction between your work and the  
8 mainstream commercial pornography that is  
9 out there on the web?

10 A Can I have an example of the  
11 mainstream commercial pornography?

12 Q Go with Hustler dot-com.

13 A Is it different than Hustler?  
14 Yes, it is very, very different than Hustler.

15 Q Do you consider your work to be  
16 artistic?

17 A Most of my work, yes.

18 Q What do you consider of your work  
19 that is not artistic?

20 MR. WIZNER: Objection, asked  
21 and answered, but you can answer it  
22 again.

23 A Again, some of the stuff that I  
24 have done before in which I was a model and  
25 had no creative direction whatsoever, most

1 H. Rearick

2 don't want to have any part of this and  
3 think you should stop because you are  
4 perpetuating blah, blah, blah.

5 So often too even in talking  
6 about reproductive rights issues, in talking  
7 about radical feminist issues, people are  
8 sometimes less than a little nice in their  
9 expressing how they feel about things that I  
10 have said.

11 Q I take it on the I guess the  
12 political side of things, those comments  
13 would not be lewd comments?

14 A No, they are not lewd, they are  
15 just sometimes very verbally abusive. And  
16 not necessarily with me, sometimes a  
17 discussion will be going on in the comments  
18 and so somebody might not be horrible to me  
19 but they might to another commenter, and I  
20 will usually take that out or tell them to  
21 saw it off, whichever.

22 Q Is it fair to say that you  
23 express a strong political viewpoint in your  
24 journal?

25 A Yes, it is.

1 H. Rearick  
2 thousands of pages of content at this point.  
3 So thank God, because we would be here for  
4 months.

5 Q Is it fair to say that what we  
6 have discussed in the exhibits today is a  
7 representative sample of items that you fear  
8 prosecution on?

9 MR. WIZNER: Objection. We  
10 have already objected to the use of  
11 the term repetitive sample in our  
12 discovery responses, but you can  
13 answer.

14 A Yes and no. I mean there is a  
15 couple of things that are left out that I  
16 would definitely say we have no, we have  
17 nothing printed out from the message boards,  
18 for instance, which would be one of the  
19 trickiest things because I have one of the  
20 busiest message boards, not just for sex  
21 eds, for any site on the web.

22 And so there is constantly  
23 created content about sex by minors at which  
24 minors are looking, where if I am not  
25 plugged in 24 hours a day, you know, there

1 H. Rearick

2 can be a huge problem for a long time, a  
3 problem per clashing with COPPA standards  
4 that I wouldn't even see.

5 Q Just to clarify, we are talking  
6 about the message board on Scarleteen?

7 A Scarleteen, sorry. My concerns  
8 are more with that in terms of Scarleteen  
9 because I don't intend Scarlet Letters to be  
10 viewed by minors. I know it is sometimes, I  
11 know it might be, but that is not my intent  
12 in making it.

13 So, not having the dynamically  
14 created content by the teenagers for the  
15 teenagers at Scarleteen, that section of the  
16 site might actually in my mind be what puts  
17 us more at risk than anything else,  
18 especially since I don't write it. I have  
19 no control over it. They are not thinking  
20 about walking on eggshells like I am because  
21 they are 16. They don't think they are  
22 accountable for anything.

23 Obviously even with my personal  
24 site with Femmerotic, we are only looking at  
25 images that are in the public sector. Now,

1 H. Rearick

2 I use a payment processor right now that is  
3 also not in ABS, so might minors be using a  
4 credit card to look at photographs which are  
5 much more explicit than these in the private  
6 sector of the site, absolutely.

7 Q To subscribe to the subscription  
8 portion of the Femmerotic website, that is  
9 done through a credit card, is that correct?

10 A It is. It is done through  
11 Verotel using a credit card, but I don't  
12 imagine that Verotel as an international  
13 company would switch to entertaining COPPA  
14 standards because they wouldn't, I don't  
15 know that they would be obliged to.

16 Q For the message boards on  
17 Scarleteen, you aren't aware of what is  
18 posted on the message boards until it is  
19 available to the public, are you?

20 A Yes, that is correct.

21 Q So other than the message boards  
22 and the subscription portion of the  
23 Femmerotic website, are there other things  
24 that we have not discussed today that you  
25 fear prosecution on under COPPA?